

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

In re Patent Application of: Naren Chaganti

Appeal 2009-012123
Application 09/307,752

For: System and Method for Sale of Shares in Intangible Property
Rights, Personal rights, Special Objects and Services

Filed: May 9, 1999
Docket No. PSCO-004

Judges: Crawford, Lorin & Mohanty
Decision Date: September 24, 2010
Examiner: Hani Kazimi

REQUEST FOR REHEARING

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REQUEST FOR REHEARING

COMES NOW, Applicant, and pursuant to 37 C.F.R. § 41.52 hereby respectfully requests rehearing from the decision dated September 24, 2010 because the Board misapprehended or overlooked the following points in rendering its decision.

POINTS BELIEVED TO HAVE BEEN MISAPPREHENDED OR OVERLOOKED

1. On pages 1 & 9 of the Specification, the Applicant specifically asserted that the “intangible” property does not include stocks or bonds. Given this clear statement, is the Board’s reliance on the Examiner—that such a statement did not exist in the Specification—correct?
2. Is the reasoning of the Board—that the dependent claims which recite an electronic marketplace for a right such as “a right to a person’s time” is anticipated or rendered obvious in view of the stock market—correct?

NATURE OF THE INVENTION

The rejected claims are directed toward an online electronic marketplace where certain “intangible” property interests—other than stocks, bonds, commodities—such as patents, copyrights, trademarks, goodwill, right to a babysitter’s time etc—are listed, bought and sold. The dispute is whether the claim term “intangible” encompasses stocks and bonds.

ARGUMENT

A. The Board erred in disregarding express statement in specification

On page 6, the Board stated:

There can be no dispute that there is no explicit definition in the Specification for the term "intangible property" because there is none. The question is whether the Specification describes the claimed intangible property in such a manner that one of ordinary skill would interpret the claim term "intangible property" to not encompass financial securities, such as stocks. The answer to that question is "no."

(Emphasis Added). And on page 7, the Board stated:

We find that the Specification does not describe the claimed 'intangible property' in such a manner that one of ordinary skill would interpret the claim term "intangible property" to not encompass financial securities, such as stocks. We agree with the Examiner that the Appellant's Specification sets out patents, trademarks, etc. as examples of intangible property but the Specification does not define that term, such that it excludes stocks. See Answer 14-16.

(Emphasis Added) The Board's statement is in clear error. Contrary to Board's statement, the Specification states as follows:

It should be understood that though the above-mentioned description appears similar to the activities of the governance of a corporation, there are significant differences between the two. Here, the asset is non-corporate. Additionally, according to the present invention, trading shares in an electronic communication medium involves subject matter other than a corporate stock, bond, option, or futures contracts to delivery of commodities—the present invention pertains to intangible property; personal property rights; unique or special objects; or services—the subject matter, the kind of which, is currently not tradeable in a market place.

Id., at p. 9 (Emphasis added). Indeed, the Background of the Invention sets forth the departure from the known forms of markets as follows:

Markets exist today for many forms of property. The New York Stock Exchange and the National Association of Securities Dealers Quotation System (NASDAQ) provide market place for trading securities such as common and preferred stocks, and warrants on sale or purchase of stocks. The Chicago Board of Exchange (CBOE) and other market places provide a forum for sale and exchange of options and future interests in several securities and commodities such as wheat, soybeans, frozen concentrated orange juice, and pork bellies. Recently, the CBOE has started trading in electricity delivery contracts.

However, no publicly tradeable stock marketplace exists for the sale of certain non-corporate, non-commodity forms of property, for example, intangible property such as a patent, a trademark, a copyright in a painting, goodwill, licenses, leases, easements, rights, a seafaring route such as the right to navigate the Suez Canal, and other similar rights; personal rights such as a right to future income of a person; special objects such as collectibles; and services such as a musician's concert recital time or a babysitter's time, which are described and discussed in relation to the invention herein.

See Specification, at p. 1 (Emphasis added). Given such clarity, the Examiner appears to have erred in failing to look at page 9 of the specification that the instant application involved “*subject matter other than a corporate stock, bond, option, or futures contracts to delivery of commodities*”. There is no warrant for the conclusion that “the Specification does not define that term, such that it excludes stocks”.

It is an error to look at “ordinary” meaning before looking at the Specification because “a patentee can act as his own lexicographer to specifically

define terms of a claim contrary to their ordinary meaning,” *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, (Fed. Cir. 1999)(Emphasis). Only in the absence of an express intent to impart a novel meaning, may claim terms take on their ordinary meaning. See *Renishaw PLC v. Marposs Societa' Per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998). In *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313 (Fed. Cir. 2002), the Court stated:

claim terms take on their ordinary and accustomed meanings unless the patentee demonstrated an intent to deviate from the ordinary and accustomed meaning of a claim term by redefining the term or by characterizing the invention in the intrinsic record using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.

Id., at 1324. Because claim scope is determined from the Specification as would be understood by one of ordinary skill, see *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004), Claim 7 is patentable over Ferstenberg and all claims that depend on Claim 7 are also likewise patentable.

B. The Examiner’s reliance on the Dictionary of Financial Terms is error

The Examiner claimed that a definition is not given because Applicant gave a number of examples with the language “such as”. But a term can be defined by explicit definition, by expressly disclaiming one of the possible meanings of a term, or by implication, i.e., setting forth a number of examples. See, e.g., *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). (“Usually, [the specification] is dispositive; it is the single best guide to the

meaning of a disputed term." * * * "[I]t is always necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning." * * * The specification acts as a dictionary when it "expressly defines terms used in the claims or when it defines terms by implication.") Claim interpretation cannot rely on a generalized dictionary when the specification provides sufficient guidance. See *Phillips v. AWH Corp.*, 415 F. 3d 1303 (Fed. Cir. 2005), which rejected reliance on a generalized dictionary to define a claim term:

The main problem with elevating the dictionary to such prominence is that it focuses the inquiry on the abstract meaning of words rather than on the meaning of claim terms within the context of the patent. Properly viewed, the "ordinary meaning" of a claim term is its meaning to the ordinary artisan after reading the entire patent. Yet heavy reliance on the dictionary divorced from the intrinsic evidence risks transforming the meaning of the claim term to the artisan into the meaning of the term in the abstract, out of its particular context, which is the specification. * * * The use of a dictionary definition can conflict with that directive because the patent applicant did not create the dictionary to describe the invention. Thus, there may be a disconnect between the patentee's responsibility to describe and claim his invention, and the dictionary editors' objective of aggregating all possible definitions for particular words.

Phillips, at 1321 (internal citation omitted)(Emphasis added). A generalized dictionary such as the one the Examiner relied upon or a document such as Cairn's detracts from the right of an applicant to be a "lexicographer". Extrinsic evidence cannot circumvent the Specification. See, e.g., *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366-67 (Fed. Cir. 2002):

[A] court may constrict the ordinary meaning of a claim term in at least one of four ways. First, *** if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history. Second, *** if the intrinsic evidence shows that the patentee distinguished that term from prior art on the basis of a particular embodiment, expressly disclaimed subject matter, or described a particular embodiment as important to the invention. Third, *** if the term "chosen by the patentee so deprive[s] the claim of clarity" as to require resort to the other intrinsic evidence for a definite meaning. ***.

(Citations omitted). If the term "intangible property" is unclear, then intrinsic evidence is the best place to look for a definition. And if the intrinsic evidence defines the term even by implication, then resort to a dictionary is error.

C. The selection of one dictionary versus another is arbitrary

The Board did not clarify how one extrinsic source is better than any other. For example, IRS publication No. 946¹ (1999) (relevant pages of this document are attached as Appendix A to this paper) defines "intangible property" as "Intangible property is generally any property that has value but that you cannot see or touch. It includes items such as computer software, copyrights, franchises, patents, trademarks, and trade names." See Appendix, page 2. The Examiner's definition that contradicts the intrinsic evidence cannot be the basis of a rejection of a claim.

D. PTO took a different position on whether stocks are "intangible property"

The PTO allowed other cases where "intangible property" was claimed:

¹ The Board is respectfully requested to take Judicial Notice of this government document and that it was published at or about the time the instant application was filed.

Patent	Filed ²	Title
7,158,949	Dec 17, 2004	Method for providing property rights based guarantees
7,188,069	Nov 30, 2000	Method for valuing intellectual property
7,228,288	Jan 11, 2000	Method of repeatedly securitizing intellectual property assets and facilitating investments therein
7,630,915	Dec 22, 2000	Intellectual property management method and apparatus

Based on these patents, the Office cannot claim any confusion between intangible property (or intellectual property) and stock or bond. If there were such confusion, the Office should explain how it allowed these patents. Clearly other examiners have a different “plain” meaning of the term “intangible property” than this Examiner, or the Office changed its mind after it rejected these claims. In either case, these patents require the Board to reverse or remand. That the Office allowed many later-filed cases with this claim term is abundant proof that the invention was novel and nonobvious when conceived.

E. The references cannot be combined because they are not enabled

The Examiner concedes that the issue is one of terminology and not of substance. Examiner’s Answer at 14. Given this agreement by the Examiner, one is left puzzled as to why the terminology created such a hindrance and rendered obvious all the claims over a combination of Ferstenberg or Stallaert as primary references, neither of which admittedly uses the word “intangible” but does not

² The dates are “asserted” effective filing dates by respective applicants, and are provided here without prejudice. Applicant, by referring these patents or their claimed effective dates, does not admit that they are relevant to the patentability of any claims in this case.

describe the type of “special” property interests described in this case. The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444(Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellant to overcome the *prima facie* case with argument and/or evidence. *See Id.*

To show *prima facie* obviousness, the reference should meet the criteria for patentability, such as written description, best mode, enablement etc. The references combined are insufficient to meet the written description and enablement requirements. The references are not combinable.

Indeed, as shown above, the PTO having allowed later-filed applications directed to the same subject matter as is claimed in this invention, any Section 103(a) rejection should be supported with a reason for combination of references. Instead, the examiner gave a conclusory statement, which is insufficient. *See KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). After *KSR*, the case should have been remanded for a detailed statement from the Examiner for reasons to combine the references. However, the case remained on appeal with the Board and the Examiner did not show any such reasons. This applies to all the rejections under Section 103(a), each of which should be reversed.

F. The dependent claims are neither obvious nor anticipated

When applicant argued that the grouped claims stand or fall together, he relied on the doctrine of claim differentiation. The dependent claims narrow the term “intangible” to specifically state other forms of property, which are, for lack of a better term, called “special” property in the application. The examiner objected to the word “special” as being “indefinite,” but when it was replaced with the word “intangible”, he argued that this was anticipated in light of Ferstenberg.

Rejection of the dependent claims that seek to patent a right rather than a stock is contrary to the doctrine of claim differentiation, which provides that no two claims in the same patent can be interpreted as having identical scope. This is especially the case if the claims are in a dependent relationship. See, e.g., *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004) (because a dependent claim recites a “pressure jacket,” an independent claim that recites only an “opening” did not require a “pressure jacket”).

Here, the Examiner read the word “intangible” to include “stock” exchange, and then read “intellectual property” to mean “intangible property” and later argued that an exchange for selling a “right to a babysitter’s time” is anticipated by a stock exchange³. Such particular → general → particular reasoning is illogical.

³ See, e.g., Claim 12, which depends from Claim 11, which depends from Independent Claim 7 narrows down the term “intangible” property to mean a “right”, which “right” is selected from the group consisting of:

One cannot generalize an “amplifier” to mean an “electronic circuit” and thereafter argue that an “oscillator” is anticipated in view of an “amplifier” because an oscillator is also an “electronic circuit.”

Because additional features are recited in the dependent claims the dependent claims cannot be invalidated by a reference that recites only stocks or bonds, even if an independent claim is so invalidated. But because the specification excluded “stocks or bonds” from the scope of the subject matter of this case, all independent and dependent claims are patentable.

CONCLUSION

Reconsideration and reversal of the Board’s decision are respectfully solicited. Alternatively, the Board is requested to clarify its reasoning in light of the language in the Specification so that an appeal to the Federal Circuit may be made.

right to a unit of service; right to income from a unit of service; right to the use of an object; right to income from an object; right to the use of a place; right to income from a place; right of way; right to navigate along a route; right to use of genetic information; right to income of a person for a period of time; right to a person’s time; right to a person’s ability, image or likeness; right to bring lawsuit against a party; right to collect a payment from a party; right to profits from a partnership; right to exclude an entity from making, using, selling, or importing a product; and right to exclude an entity from making, using, selling, or importing a product made of a method.

It is respectfully suggested that one does not confuse these rights with “corporate” stock sold on a public market such as the NYSE.

Respectfully submitted,

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The undersigned certifies that this paper is filed and served electronically upon all interested parties via the Private Pair System on the date shown below.

Date: September 30, 2010.

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Appendix A



Publication 946

Cat. No. 13081F

How To Depreciate Property

- Section 179 Deduction
- MACRS
- Listed Property

For use in preparing

1999 Returns



Get forms and other information faster and easier by:

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See *How To Get More Information* in this publication.

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Important Changes for 1999

Depreciation limits on business cars and clean-fuel vehicles. The total section 179 deduction and depreciation you can take on a car (that is not a clean-fuel vehicle) you use in your business and first place in service in 1999 is \$3,060. The maximum depreciation

1.

General Information

Introduction

This chapter discusses the general rules for depreciating property. It is divided into six major sections.

- **Depreciation Defined.** This section defines depreciation. It also defines the two types of property — tangible and intangible — and discusses real property and personal property.
- **Who Can Claim Depreciation.** This section identifies those who can claim depreciation and provides examples.
- **What Can Be Depreciated.** This section discusses what types of tangible and intangible property you can depreciate. It also discusses how you can depreciate partial business-use property. Finally, it discusses depreciation of land preparation costs, repairs and replacements, durable containers, cooperative apartments, and other special situations.
- **What Cannot Be Depreciated.** This section discusses the different kinds of property that cannot be depreciated. It specifically addresses the treatment of property placed in service and disposed of in the same year, inventory, leased property, term interests in property, and more.
- **When Depreciation Begins and Ends.** This section discusses when property is considered placed in service, when the basis of property is fully recovered, and when property is retired from service.
- **How To Claim Depreciation.** This section discusses when to use Form 4562 *Depreciation and Amortization*. It also contains a table that outlines the purpose of each part of Form 4562.
- **Incorrect Amount of Depreciation Deducted.** This section discusses what to do when you deducted the incorrect amount of depreciation. It covers amending your return and changing your method of accounting.

Useful Items

You may want to see:

Publication

- 463** Travel, Entertainment, Gift, and Car Expenses
- 534** Depreciating Property Placed in Service Before 1987

- 535** Business Expenses
- 538** Accounting Periods and Methods
- 544** Sales and Other Dispositions of Assets
- 551** Basis of Assets

Form (and Instructions)

- 2106** Employee Business Expenses
- 2106-EZ** Unreimbursed Employee Business Expenses
- 4562** Depreciation and Amortization
See chapter 6 for information about getting publications and forms.

Depreciation Defined

Depreciation is a decrease in the value of property over the time the property is being used. Events that can cause property to depreciate include wear and tear, age, deterioration, and obsolescence. You can get back your cost of certain property by taking deductions for depreciation. For example, you can take a depreciation deduction for equipment you use in your business or for the production of income.

Types of Property

To determine if you can take a depreciation deduction for your property, you must be familiar with the types of property. Property is either of the following.

- Tangible
- Intangible

Tangible Property

Tangible property is property that you can see or touch. There are two main types of tangible property.

- Real property
- Personal property

Real property. Real property is land, buildings, and generally anything built or constructed on land, growing on land, or attached to the land.

Personal property. Tangible personal property includes cars, trucks, machinery, furniture, equipment, and anything that you can see or touch, except real property.

Intangible Property

Intangible property is generally any property that has value but that you cannot see or touch. It includes items such as computer software, copyrights, franchises, patents, trademarks, and trade names.

Intangible Property

Terms you may need to know (see Glossary):

Adjusted basis
Basis
Capitalized
Goodwill
Patent
Salvage value
Straight line method
Useful life

Intangible property is property that has value but cannot be seen or touched. Generally, you can either amortize or depreciate intangible property.

You must amortize certain intangible property over 15 years if you meet the following conditions.

- You acquired the property after August 10, 1993, (after July 25, 1991, if elected).
- You use the property in connection with a business or for the production of income.

If you meet these conditions, amortize the following intangibles.

- 1) Patents and copyrights.
- 2) Customer or subscription lists, location contracts, and insurance expirations.
- 3) Designs and patterns.
- 4) Franchises.
- 5) Agreements not to compete.

 *If you created any of the intangibles listed in items (1) through (3), you can amortize them only if you created them in connection with the acquisition of assets constituting a trade or business or a substantial part of a trade or business.*

For more information on amortizing these and other intangibles, see chapter 12 in Publication 535.

Generally, you can depreciate any of these intangibles that were acquired before August 11, 1993, or that do not qualify for amortization. However, they must have a determinable useful life.

Agreements not to compete, lists, contracts, and expirations are sometimes confused with goodwill, which is not depreciable. Therefore, you must be able to determine their value separately from the value of any goodwill that goes with the business.

If you can depreciate the cost of a patent or copyright, you can use the straight line method over the useful life. The useful life of a patent or copyright is the lesser of the life granted to it by the government or the remaining life. If it becomes valueless before the end of its useful life, you can deduct in that year any of its remaining cost or other basis.

Computer software. Computer software includes all programs designed to cause a computer to perform a desired function. Computer software also includes any data base or similar item that is in the public domain and is incidental to the operation of qualifying software.

Generally, you can depreciate software over 36 months. However, if you acquired the software in connection with the acquisition of a substantial portion of a business you can depreciate it over 36 months only if it meets all of the following requirements.

- It is readily available for purchase by the general public.
- It is not subject to an exclusive license.
- It has not been substantially modified.

If you acquired it in connection with the acquisition of a substantial portion of a business and it does *not* meet all of the requirements listed above, you must amortize it over 15 years (rather than depreciate it).

Software leased. If you lease software, you can treat the rental payments in the same manner that you treat any other rental payments.

Year 2000 costs. Year 2000 costs are costs of converting or replacing computer software to recognize dates beginning in the year 2000. They include costs of the following.

- Manually converting existing software.
- Developing new software.
- Purchasing or leasing new software to replace existing software.
- Developing or purchasing software tools to assist you in converting your existing software.

Treat year 2000 costs as computer software for depreciation purposes.

Any change in the treatment of year 2000 costs to allow them to be treated as computer software for depreciation purposes is a change in accounting method. If you want to make this type of change, follow the automatic change in accounting method provisions of Revenue Procedure 98-60 in Internal Revenue Bulletin No. 1998-51.

Straight Line Method

Generally, if you can depreciate intangible property, you use the straight line method of depreciation. It lets you deduct the same amount of depreciation each year.

To figure your deduction, first determine the adjusted basis, salvage value, and estimated useful life of your property. Subtract the salvage value, if any, from the adjusted basis. The balance is the total amount of depreciation you can take over the useful life of the property.

Divide the balance by the number of years in the useful life. This gives you the amount of your yearly depreciation deduction. Unless there is a big change in adjusted basis or useful life, this amount will stay the same throughout the time you depreciate the property. If, in the first year, you use the property for less than a full year, you must prorate your depreciation deduction for the number of months in use.

Example. In April, Frank bought a patent for \$5,100. It was not acquired in connection with the acquisition of any part of a trade or business. He depreciates the patent under the straight line method, using a 17-year useful life and no salvage value. He divides the \$5,100 basis by 17 years ($\$5,100 \div 17 = \300) to get his yearly depreciation deduction. Because he only used the patent for 9 months during the year, he multiplies \$300 by $\frac{9}{12}$ to get his deduction of \$225. Next year, Frank can deduct \$300 for the full year.

What Cannot Be Depreciated

To determine if you are entitled to depreciation, you must know not only what you can depreciate, but what you cannot depreciate.

Property placed in service and disposed of in the same year. You cannot depreciate property you place in service and dispose of in the same year. When you place property in service is explained later.

Tangible Property

Terms you may need to know (see Glossary):

Basis
Remainder interest
Term interest
Useful life

The following are types of tangible property that you generally cannot depreciate, even though you use them in your business or hold them to produce income.

Land. You can never depreciate the cost of land because land does not wear out, become obsolete, or get used up. The cost of land generally includes the cost of clearing, grading, planting, and landscaping because these expenses are all part of the cost of the land itself. You may be able to depreciate some land preparation costs. For information on these costs, see *Land preparation costs* under *What Can Be Depreciated*, earlier.

Inventory. You can never depreciate inventory. Inventory is any property you hold primarily for sale to customers in the ordinary course of your business.

In some cases, it is not clear whether property is inventory or depreciable business property. If it is unclear, examine carefully all the facts in the operation of the particular business. The following example shows two similar situations where a careful examination of the facts in each situation results in different conclusions.

Example. Maple Corporation is in the business of leasing cars. At the end of their useful lives, when the cars are no longer profitable to lease, Maple sells them. Maple does not have a showroom, used car lot, or individuals to sell the cars. Instead, it sells them through wholesalers or by similar arrangements in which a dealer's profit is not intended or considered. Maple can

depreciate the leased cars because the cars are not held primarily for sale to customers in the ordinary course of business, but are leased.

If Maple buys cars at wholesale prices, leases them for a short time, and then sells them at retail prices or in sales in which a dealer's profit is intended, the cars are treated as inventory and are not depreciable property. In this situation, the cars are held primarily for sale to customers in the ordinary course of business.

If you are a rent-to-own dealer, see *Rent-to-own dealer* under *Property Classes and Recovery Periods* in chapter 3.

Containers. Generally, containers are part of inventory and you cannot depreciate them. For information on containers that you can depreciate, see *Durable containers* under *What Can Be Depreciated*, earlier. For more information on inventory, see *Inventories* in Publication 538.

Equipment used to build capital improvements.

You cannot deduct depreciation on equipment you are using to build your own capital improvements. You must add depreciation on equipment used during the period of construction to the basis of your improvements. See *Uniform Capitalization Rules* in Publication 551.

Leased property. You can depreciate leased property only if you retain the incidents of ownership for the property (explained later). This means you bear the burden of exhaustion of the capital investment in the property. Therefore, if you lease property from someone to use in your trade or business or for the production of income, you generally cannot depreciate its cost because you do not retain the incidents of ownership. You can, however, depreciate any capital improvements you make to the property. See *Additions or improvements to property*, in chapter 3.

If you lease property to someone, you generally can depreciate its cost even if the lessee (the person leasing from you) has agreed to preserve, replace, renew, and maintain the property. However, if the lease provides that the lessee is to maintain the property and return to you the same property or its equivalent in value at the expiration of the lease in as good condition and value as when leased, you cannot depreciate the cost of the property.

Incidents of ownership. Incidents of ownership include the following.

- The legal title.
- The legal obligation to pay for it.
- The responsibility to pay its maintenance and operating expenses.
- The duty to pay any taxes.
- The risk of loss if the property is destroyed, condemned, or diminishes in value through obsolescence or exhaustion.

Term interests in property. Generally, you cannot take a deduction for depreciation on a term interest in property created or acquired after July 27, 1989, for any period during which the remainder interest is held, di-

rectly or indirectly, by a person related to you. A person related to you includes the following.

- Your spouse, child, parent, brother, sister, half-brother, half-sister, ancestor, or lineal descendant.
- A corporation in which you or a family member own (directly or indirectly) more than 50% of the outstanding stock.
- Certain educational and charitable organizations that are controlled (directly or indirectly) by you or a family member.
- A partnership in which you or a family member own (directly or indirectly) any capital or profits interests.
- An S corporation in which you or a family member own (directly or indirectly) any stock.

You cannot take a deduction for depreciation or amortization for a life or term interest acquired by gift, bequest, or inheritance.

Basis adjustments. If, except for this provision, you would be allowed a depreciation deduction for any term interest in property, reduce your basis in the property by any depreciation or amortization not allowed.

The holder of the remainder interest generally increases his or her basis in a remainder interest in property by the amount of depreciation deductions not allowed. However, do not increase the basis of a remainder interest for any deductions not allowed for periods during which the term interest is held by an organization exempt from tax. Also, do not increase the basis for deductions not allowed for periods during which the interest was held by a nonresident alien individual or foreign corporation if the income from the term interest is not effectively connected with the conduct of a trade or business in the United States. The basis adjustment rules do not apply to any term or life interest acquired by gift, bequest, or inheritance.

Exceptions. The above rules do not apply to the holder of dividend rights which were separated from any stripped preferred stock purchased after April 30, 1993, or to a person whose basis in the stock is determined by reference to the basis in the hands of that purchaser.

Intangible Property

Terms you may need to know (see Glossary):

Capitalized
Goodwill
Useful life

The following are two types of intangible property that you can never depreciate.

Goodwill. You can never depreciate goodwill because its useful life cannot be determined.

However, if you acquired a business after August 10, 1993 (after July 25, 1991, if elected), and part of the price included goodwill, you may be able to amortize the

cost of the goodwill over 15 years. For more information, see chapter 12 in Publication 535.

Trademark and trade name. In general, you must capitalize trademark and trade name expenses. This means you cannot deduct the full amount in the current year. You can neither depreciate nor amortize the costs of trademarks and trade names you acquired before August 11, 1993 (before July 26, 1991, if elected). You may be able to amortize over 15 years the costs of trademarks and trade names you acquired after August 10, 1993 (after July 25, 1991, if elected). For more information, see chapter 12 in Publication 535.

When Depreciation Begins and Ends

Terms you may need to know (see Glossary):

Basis
Disposed
Exchange
Placed in service

You begin to depreciate your property when you place it in service for use in your trade or business or for the production of income. You stop depreciating property either when you have fully recovered your cost or other basis or when you retire it from service, whichever happens first.

Placed in Service

For depreciation purposes, you place property in service when it is ready and available for a specific use, whether in a trade or business, the production of income, a tax-exempt activity, or a personal activity. Even if you are not using the property, it is in service when it is ready and available for its specific use.

Example 1. You bought a home and used it as your personal home several years before you converted it to rental property. Although its specific use was personal and no depreciation was allowable, you placed the home in service when you began using it as your home. You can claim a depreciation deduction in the year you converted it to rental property because its use changed to an income-producing use at that time.

Example 2. You bought a planter for your farm business late in the year after harvest was over. You take a depreciation deduction for the planter for that year because it was ready and available for its specific use.

Cost or Other Basis Fully Recovered

You have fully recovered your cost or other basis when you have taken section 179 and depreciation deductions that are equal to your cost or investment in the property.